

**BEFORE THE APPEALS BOARD
FOR THE
KANSAS DIVISION OF WORKERS COMPENSATION**

JIM TOLE

Claimant

VS.

CESSNA AIRCRAFT

Respondent,
Self-Insured

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Docket No. 1,007,446

ORDER

Claimant appealed the May 7, 2003 preliminary hearing Order entered by Administrative Law Judge John D. Clark.

ISSUES

Claimant alleges that he injured his neck while working for the respondent. Claimant initiated this claim by filing an application for hearing that alleged an accident date of "03/02 and each day worked thereafter" from "twisting, bending at computer desk while working and typing in awkward positions."

In the May 7, 2003 Order, Judge Clark denied claimant's request for benefits. The Judge determined the medical evidence did not support claimant's allegations that his neck problems were caused by working at a computer. The Judge did not reach the notice issue, which respondent also raised.

Claimant contends Judge Clark erred. Claimant argues his testimony is uncontradicted that his work activities aggravated his neck. Moreover, claimant argues his position is supported by respondent's company physician, who testified that claimant's work activities were of the type that could aggravate his neck condition. Claimant also argues that his position is supported by his treating physician, who has noted that claimant's work activities have aggravated his neck problems. Furthermore, claimant argues that he gave respondent timely notice of the accidental injury. Accordingly, claimant requests the Board to reverse the May 7, 2003 Order and grant his request for benefits.

Conversely, respondent contends the May 7, 2003 Order should be affirmed. Respondent argues that claimant failed to prove that his alleged injury arose out of and in the course of his employment with respondent. Respondent also argues that claimant

failed to provide timely notice of the alleged accidental injury. Accordingly, respondent contends claimant's request for workers compensation benefits should be denied.

The issues before the Board on this appeal are:

1. Did claimant's work activities either injure or aggravate his neck?
2. If so, did claimant provide respondent with timely notice of the accidental injury?

FINDINGS OF FACT AND CONCLUSIONS OF LAW

After reviewing the record compiled to date and the parties' arguments, the Board finds and concludes that the May 7, 2003 Order should be affirmed. The Board agrees with the Judge that claimant failed to prove that his alleged neck injury was either caused or aggravated by his work activities.

In February 2001, claimant began working for respondent as a manufacturing engineer. In early March 2002, claimant began experiencing pain in his right shoulder and upper back. According to medical records from the Wichita Clinic, P.A., dated March 4, 2002, which were introduced at the preliminary hearing, claimant noticed his symptoms when he awoke the previous morning. The history contained in those medical records reads:

This patient is a pleasant 62-year-old gentleman who comes in today after noticing this morning he had a rather sudden onset of pain up in the back, specifically the right upper back and right shoulder. He points to an area along the trapezius and just below it. He says that he woke yesterday morning and was very sore. He denies any injury. He says he may have felt a little bit of twinge of pain last week. However, it really went away until yesterday morning. . . .

Assuming that history is accurate, claimant awoke with pain on March 3, 2002, which was a Sunday. Moreover, claimant testified that he probably did not work the day before.

Claimant continued to work for respondent through approximately April 18, 2002. During that period, claimant did not advise respondent that his work was causing his symptoms. Instead, claimant advised a supervisor, Joseph King, that his neck was hurting because he had slept on it wrong. When Mr. King asked claimant if the neck problem had happened at work, claimant responded that it had not. Moreover, claimant testified that he probably did not tell his supervisor that his neck problem was related to his work activities anytime before June 2002.

In May 2002, claimant underwent an MRI, which revealed moderate to severe stenosis between the fifth and sixth cervical vertebrae, with a posterior central disc

protrusion, and a moderate stenosis between the sixth and seventh cervical vertebrae. In addition to cervical stenosis, one of claimant's treating physicians, Dr. Thomas W. Kneidel, also diagnosed cervical spondylosis.

The parties deposed Dr. Jeanne Barcelo who testified that claimant had cervical stenosis, which she described as severe arthritis that has narrowed the spinal canal. Dr. Barcelo also testified that stenosis was often congenital or the result from an overgrowth of bone as we age. The doctor referred to claimant's neck condition as a preexisting disease process. Dr. Barcelo was not asked whether claimant's work activities either caused, accelerated or intensified the arthritic condition in claimant's neck, although the doctor was concerned that claimant's job as a manufacturing engineer might aggravate his neck should he lift heavy parts by himself.

At the preliminary hearing, claimant also introduced approximately 150 pages of medical records from various sources. Although the pages in claimant's exhibits are quite numerous, the Board is unable to find an expert medical opinion in those records that indicates claimant's work activities caused, accelerated or intensified the stenosis or spondylosis in claimant's neck.

At this stage of the proceeding, the medical evidence establishes that claimant has a narrowed cervical spinal canal that was either congenital or caused by the overgrowth of bone as claimant aged. Claimant has failed to establish that his work has contributed to or aggravated that disease process. Accordingly, based upon the record compiled to date, the Judge properly denied claimant's request for preliminary hearing benefits.

For future reference, claimant's counsel is encouraged to introduce only those medical records that are material to the issues.

WHEREFORE, the Board affirms the May 7, 2003 Order.

IT IS SO ORDERED.

Dated this ____ day of June 2003.

BOARD MEMBER

c: Michael L. Snider, Attorney for Claimant
Matthew J. Schaefer, Attorney for Respondent
John D. Clark, Administrative Law Judge
Paula S. Greathouse, Workers Compensation Director